IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.9.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case Appeal No.251 of 2010

M/s.Yule Engineering Corporation,
No.3-C, Phase-III,
Thiru Vi Ka Industrial Estate,
Ekkattuthangal, Chennai 600 097. Appellant

Vs.

The Assistant Commissioner of Income Tax
Circle V, Chennai Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 22.5.2009 made in ITA No.1511/Mds/2008, against the order of the commissioner of Income-Tax (Appeals)-VIII, Chennai in ITA No.39/07-08 dt 03/04/2008 against the order of the Assistant Commissioner of Income-Tax, Circle-V Chennai-34 dated 4.12.2007 for the assessment year 2005-06.

For Appellant : Mr.M.P.Senthilkumar

For Respondent : Mr.M.Swaminathan
Senior Standing Counsel assisted by
Mr.V.Pushpa, Jr. Standing Counsel

J U D G M E N T
(Delivered by DR.VINEET KOTHARI,J)

The Assessee, M/s.Yule Engineering Corporation has filed the present Tax Case (Appeal) under Section 260-A of the Income Tax Act, 1961 aggrieved by the order dated 22nd May 2019 of the learned Income Tax Appellate Tribunal for the Assessment Year 2005-2006.

2. The Tribunal, by the impugned order, dismissed the Appeal filed by the Revenue and the Cross Objection filed by the Assessee and held against the Assessee that since the Assessee failed to produce Books of Accounts at the time of original Assessment to claim carry forward loss, the Assessing Authority

was left with no other option to take best judgment Assessment and in the absence of Books of Accounts being produced by the Assessee, the claim of loss was not allowed. The Tribunal also held against the Revenue that the Revenue also could not claim separate additions for Cash Credits under Section 68 of the Act when once the Assessment was undertaken on the best Judgment Assessment under Section 144 of the Act.

3. The operative portion of the order passed by the learned Tribunal is quoted below for ready reference:-

> "3. After hearing the rival submissions in the light of available material on record and after giving thoughtful consideration thereto, we are of the considered opinion that both Revenue as well as the assessee have to fail in their appeals. When the Assessing Officer has made the best judgment assessment under Section 144 after rejecting (or ignoring) the books of accounts, although audited accounts were produced before him, no addition can be made under section 68 of the Act on account of credits or unsecured loans found recorded in the same very books of account. The Hon'ble Chennai Bench's decision cited supra supports our above finding. When the income is estimated under section 144 of the Act, no separate addition under Section 68 can be validly made when the books of account are rejected/ignored regarding any entry found recorded therein which is deemed to have been ignored/rejected. Therefore, as a necessary corollary of the above premise, no further addition can be made under Section 68 of the Act. In so far as the claim of loss is concerned, in our considered opinion the same cannot be allowed in the absence of any requisite proof thereof. As a result, we dismiss both the appeal as well as the Cross Objection."

4. Learned counsel for the Appellant/Assessee urged before us that since the Books of Accounts were produced before the Trial Court in a Civil Suit filed by the parties on account of disputes in the Partnership, the same could not be produced before the Assessing Authority. No proof of such Books of Accounts being produced before the Trial Court seems to have been produced before the Authorities below nor even upon Court's query, the learned counsel for the Appellant/Assessee could point out any order of the Trial Court or document in that regard.

5. The best Judgment Assessment is resorted to by the Assessing Authority when the Assessee failed to produce the Books of Accounts and satisfy and verify the entries in the

Books of Accounts with regard to the loss incurred. The two Appellate Authorities have concurrently approved such assessment order and therefore, disallowed the carried forward loss in the hands of the Assessee. While doing so, the Tribunal also dismissed the Department's Appeal and has held that separate additions under Section 68 of the Act cannot be made since the best Judgment Assessment was made under Section 144 of the Act. The Revenue is not in Appeal before this court.

6. The learned Senior Standing Counsel, Mr.M.Swaminathan appearing for the Revenue supported the impugned order of the Tribunal.

7. Having heard the learned counsel for the parties, we are satisfied that no substantial question of law arises in the present Appeal under Section 260A of the Act requiring our further consideration. The best Judgment Assessment, in the circumstances of the case, is based on findings of facts which have been confirmed by the learned Tribunal as well as the first Appellate Authority. Therefore, we do not find any merit in the present Appeal filed by the Assessee and it is liable to be dismissed. Accordingly, it is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssk.

To

1.The Assistant Commissioner of Income Tax
Circle V, Chennai.

2.The Income Tax Appellate Tribunal,
C Bench, Chennai.

3.The Commissioner of Income Tax
(Appeals)-VIII, Chennai.

4.Assistant Commissioner of Income Tax,
Circle V, Chennai-34.

+1cc to Mr.M.Swaminathan, Advocate SR.76076

TC(A) No.251 of 2010

SS(CO)
CB(07/11/2019)